

1 but also to provide a community service to its viewers in a  
2 community where FSU looms large as a cultural and entertainment  
3 center of the San Joaquin Valley. Approximately 5.5% of the  
4 gross revenues of KMPH for 1990, for example, was attributable to  
5 televising FSU football and basketball games. Recently, KMPH  
6 celebrated 20 years of continuous operation and service to the  
7 San Joaquin Valley. Prominently featured in the promotional  
8 spots aired over KMPH during its anniversary promotion was the  
9 relationship between KMPH and FSU, and specifically FSU  
10 athletics. The association of KMPH with FSU and its nationally  
11 recognized athletic program is important to KMPH as a critical  
12 building block in the creation of and maintenance of the  
13 franchise value of the station, far beyond the numerical  
14 contributions to revenue and profit made by FSU athletic  
15 telecasts. The association of KMPH with FSU is of equal  
16 importance to the viewers of KMPH. For many of the viewers of  
17 KMPH, free television is their sole source of affordable  
18 entertainment. KMPH, for many, is the only way to watch the  
19 athletic exploits of the Fresno State Bulldogs. The close  
20 identity of KMPH and FSU athletics has been instrumental in  
21 developing viewer station loyalty and the continued close  
22 identity and relationship between KMPH and FSU is critical to  
23 maintaining the identity of KMPH as "your station" - an attribute  
24 that makes KMPH unique among the commercial television stations  
25 serving the Fresno market, of which there are a total of eight  
26 (8).

27 16. The signal of KMPH is received by approximately  
28 98% of the households within the market area of KMPH. FSU

1 athletic events are among the most important entertainment events  
2 in the San Joaquin Valley. For example, according to Arbitron,  
3 the away game between undefeated FSU and winless New Mexico State  
4 which was televised by KMPH on Saturday afternoon, October 19,  
5 1991, received a 33% share (nearly 200,000 persons viewing in the  
6 entire valley). Approximately one out of every three people  
7 watching television within the market area of KMPH, and during  
8 the rating period, was watching the Bulldogs on KMPH. Typically,  
9 ratings for afternoon games are lower than for evening games, and  
10 games against formidable opponents, such as WSU and OSU, receive  
11 higher ratings.

12 BACKGROUND OF DEFENDANTS' VIOLATIONS

13 17. It is extremely valuable to colleges and  
14 universities engaged in college football. including FSU. WSU. OSU

1 is, in part, created by the televising of a university's football  
2 games, as well as other students who are made aware of the  
3 university and attracted by the prominence of the university's  
4 athletic program. FSU was ranked among the top 25 college  
5 football teams in America during the 1991 and 1992 seasons and on  
6 various occasions in the past, and FSU defeated national  
7 powerhouse, USC, in the 1992 Freedom Bowl.

8 19. The appearance on television of a college  
9 football team enhances the recognition and reputation of the  
10 institution among members of the general public. The televising  
11 of college football games affects the attention which the  
12 participating football teams receive from sports writers and  
13 college football coaches and, therefore, affects the national  
14 rankings of the participating colleges' football teams. Both of  
15 these factors have great impact on the colleges' ability to  
16 maintain or enhance their national following, increase  
17 contributions and recruits students both for the colleges'  
18 athletic and academic programs.

19 20. At all times, the members of defendant PAC-10,  
20 and FSU have been members of Division I-A of the NCAA (the NCAA  
21 division whose members have the most prominent and successful  
22 football programs), have engaged in college football and have  
23 participated in the market for live college football television  
24 broadcasts. At all relevant times, defendant, PAC-10, and each  
25 of its member schools and FSU have been members of the NCAA.

26  
27 **THE ROLE OF THE HOME TEAM**  
28 **IN TELEVISIONING COLLEGE FOOTBALL GAMES**

1           21. At all times since the inception of television  
2 broadcasting of college football games, all television agreements  
3 for specific games were made by the home team (the "host  
4 institution"). Plaintiff is informed and believes and thereupon  
5 alleges that this custom and practice has been followed with  
6 respect to and is part of every football game contract between  
7 universities. It was adopted and has been continuously followed,  
8 among other reasons, because the home team is in a better  
9 position than the visiting university to negotiate issues such as  
10 stadium access, power supply and lighting, working media  
11 credentials, camera positions, announcing booth space,  
12 complimentary tickets, and adherence to Federal Communications  
13 Commission ("FCC") policies and regulations affecting the  
14 broadcast site.

15           22. This practice of "home rule" with respect to  
16 television coverage has been recognized and followed, to the best  
17 of plaintiff's information and belief, in virtually every  
18 transaction providing for television football rights since 1951.  
19 The same practice prevails in college basketball television  
20 contracts. It is the well-established and well-recognized right  
21 of the host institution to make the television arrangements for  
22 college football and basketball games.

23           23. Plaintiff is informed and believes and alleges  
24 thereon that this custom and practice of "home rule" is  
25 recognized by defendants PTN, CVN, CAP CITIES/ABC, ESPN and PAC-  
26 10 in both their broadcast and cable television agreements which  
27 provide, inter alia, that these agreements shall not prohibit an  
28 individual PAC-10 member institution from granting rights to

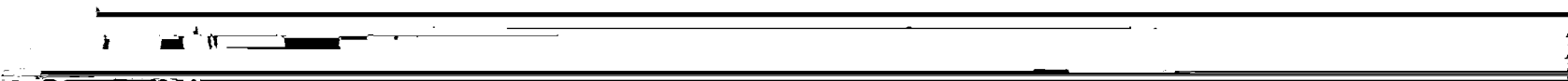

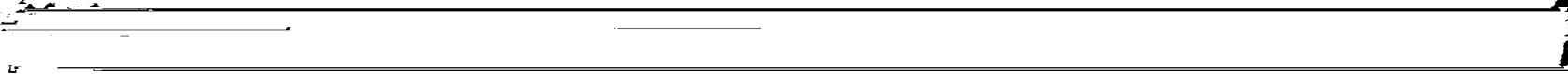


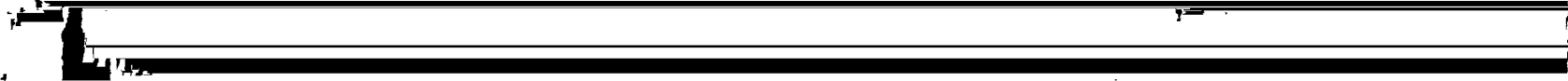


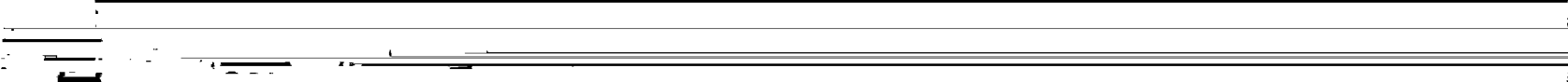
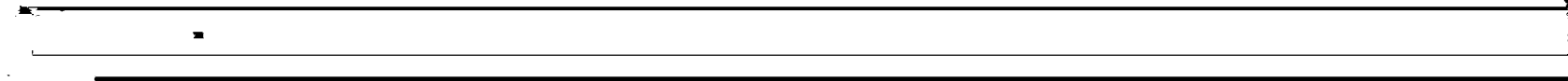
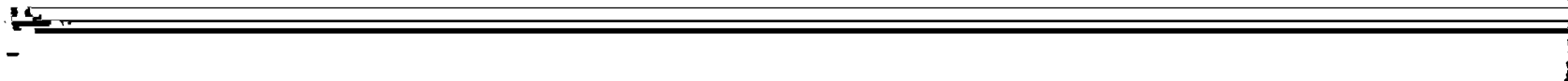





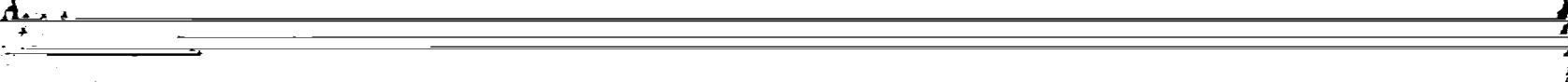

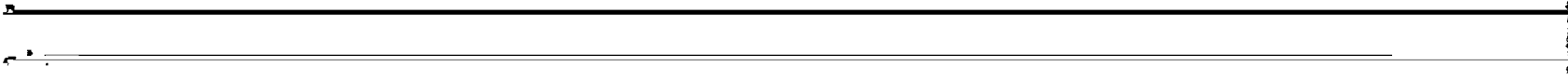

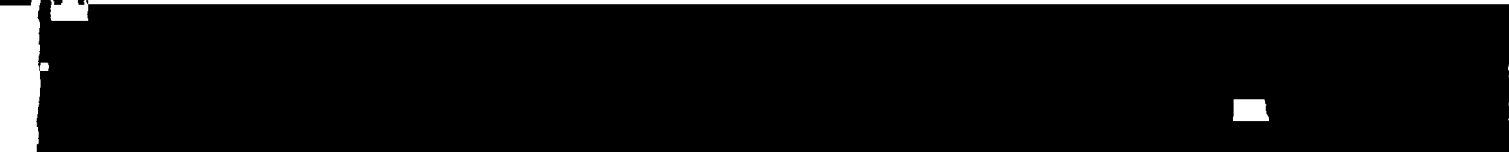
1 football games with respect to its own home area, provided that  
2 such a grant is not inconsistent with the agreement(s).

3  
4 THE NCAA'S ROLE IN TELEVISION COVERAGE  
5 OF INTERCOLLEGIATE FOOTBALL.

6 24. The bylaws of the NCAA provide for the  
7 classification of members into three divisions (denominated I,  
8 II, and III) according to specified criteria relating generally  
9 to the size and diversity of each institution's athletic program.  
10 Division I is comprised of schools with the largest and most  
11 diverse athletic programs. Of the Division I schools, not all  
12 field intercollegiate football teams. For the sport of football  
13 only, the Division I institutions have been further subdivided  
14 into Division I-A (consisting of the institutions with major  
15 football programs) and I-AA. Institutions are assigned to  
16 Division I-A or I-AA according to criteria which includes the  
17 size and prominence of the football program, the size of the  
18 school's football stadium and average paid attendance. Generally  
19 speaking, Division I-A members are those institutions with the  
20 most prominent and nationally-recognized programs, and are most  
21 in demand for television appearances on commercial networks. The  
22 member institutions of Defendant PAC-10 (including non-parties  
23 WSU and OSU), and non-party FSU are all members of Division I-A.

24 25. In a competitive market, each football-playing  
25 institution would be an independent seller of the right to  
26 televise its football games. Each seller would be free to sell  
27 that right to any individual station or network it chose, for  
28 whatever price it could obtain, and would not agree with other

1 institutions to artificially limit such right or its ability to  
2 compete head-to-head (i.e., two or more games played at  
3 any planning times) with other institutions in telecasting its



1 higher and output being lower than they would  
2 otherwise have been, and both being unresponsive to  
3 consumer preference; and

4 (d) The plan effectively eliminated individual  
5 television stations as competitors from the market  
6 since only those programmers able to bid on the entire  
7 plan could compete.

8 28. From 1952 until June 27, 1984, the NCAA  
9 formulated television plans for coverage of college football by  
10 the commercial television networks. During this period, the NCAA  
11 negotiated all agreements with the television networks, and  
12 controlled the entire market for live college football television  
13 broadcasts. No NCAA member was permitted to sell live television  
14 rights to its own college football games except in accordance  
15 with the NCAA plan then in effect.

16 29. The NCAA is and was more than a price-fixing and  
17 output restricting cartel. Its member institutions created.

1 intercollegiate athletic venture. Absent the PAC-10, college  
2 football would continue as a vital and distinct product under the  
3 NCAA's administration, and individual schools could readily  
4 market television rights to their games. The PAC-10 is not and  
5 never has been necessary for college football to exist.

6  
7 CAP CITIES/ABC'S DOMINANCE IN COLLEGE FOOTBALL TELEVISION

8 31. For at least 28 consecutive years, through the



1 NCAA alleging that the NCAA's control of college football  
2 television violated the Federal Antitrust Laws. On June 27,  
3 1984, the United States Supreme Court held in that lawsuit that  
4 the NCAA's television plan (including its contracts with two  
5 national television networks pursuant to the plan) violated  
6 Section I of the Sherman Act. The Supreme Court held that the  
7 NCAA plan had the affect of fixing the prices for and restricting  
8 the output of live college football television broadcasts, lacked  
9 any adequate justification for these anti-competitive features,  
10 and therefore amounted to an unreasonable restraint of trade in  
11 violation of Section I of the Sherman Act. NCAA v. Board of  
12 Regents in the State of Oklahoma, et al., 468 U.S. 85, 104 S.Ct.  
13 2498 (1984) (The "NCAA Decision").

14 34. The Supreme Court concluded that the NCAA plan  
15 limited both the total amount of televised college football  
16 available and the number of games that any one team could  
17 televise. These limitations were found to be a classic,  
18 horizontal agreement to limit output (and thus enhance price) in  
19 restraint of trade. The court referred to the district court's  
20 finding that the output restrictions had the effect of raising  
21 the price paid by the networks for television rights, and pointed  
22 out that the restrictions could be enforced by the NCAA's power  
23 to impose sanctions on its member institutions. The court cited  
24 with approval the district court's conclusion that "Many  
25 telecasts that would occur in a competitive market are foreclosed  
26 by the NCAA's plan" and concluded that the output limiting aspect  
27 of the NCAA plan:

28 "Constitutes a restraint upon the operation

1 of a free market, and the findings of the  
2 district court established that it is  
3 operated to raise price and reduce output.  
4 With the Rule of Reason, these hallmarks of  
5 anti-competitive behavior placed upon  
6 petitioner a heavy burden of establishing  
7 an affirmative defense which competitively  
8 justifies this apparent deviation from the  
9 operations of a free market."

10 The Supreme Court concluded that the justifications proffered by  
11 the NCAA were insufficient to justify the anti-competitive  
12 affects of their restraints.

13  
14 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

15 VS. ABC DECISION

16 35. In 1984 the Regents of the University of  
17 California, the University of Southern California, The Pacific-10  
18 Conference and The Big-10 Conference filed an anti-trust suit  
19 against the American Broadcasting Companies, Inc., ABC Sports,  
20 ESPN, the College Football Association ("CFA"), the Board of  
21 Regents of the University of Nebraska, and the University of  
22 Notre Dame Du Lac.

23 36. On November 9, 1984 the Ninth (9th) Circuit Court  
24 of Appeal affirmed the decision of the Honorable Richard A.  
25 Gadbois, Jr., granting a preliminary injunction prohibiting two  
26 defendant schools from refusing to consent to the broadcast of  
27 cross-over games (games between a CFA member and a non-CFA  
28 member) between the plaintiff institutions and defendant

1 institutions solely on the basis of the exclusivity terms of  
2 their contract with the remaining defendants, 747 F. 2d 511 ("CFA  
3 Decision").

4 37. The plaintiffs in the CFA case alleged that the  
5 cross-over restriction was a refusal to deal and, in the  
6 alternative, they asserted that the defendants formed a cartel  
7 restricting the output of televised games so as to artificially  
8 raise the value of the ABC-CFA contract. In summary, the  
9 plaintiff's complaint alleged classic anti-trust violations of  
10 "group boycott" and "price fixing".

11 38. In affirming Judge Gadbois' order, the 9th  
12 Circuit opined:

13 "Accordingly, the reasoning of the NCAA Decision  
14 suggests that traditional anti-trust analysis, and the  
15 attendant per se label, should apply to the  
16 plaintiff's boycott and price fixing allegations."  
17 747 F. 2d 511, 516 [Emphasis added].

18 39. Despite the NCAA Decision and the CFA Decision,  
19 defendant PAC-10 and its members, through the PAC-10's joint  
20 marketing plan, continued their attempt to obtain cartel profits  
21 for themselves, to restrict output and restrict all meaningful  
22 head-to-head competition.

23 40. During 1983-1984 defendant PAC-10 and non-party  
24 The BIG Ten Conference ("Big Ten") refused to participate in  
25 college football television packages promoted and sponsored by  
26 the CFA and the Football Television Planning Committee ("FTPC").  
27 Rather, in or about 1984 the PAC-10 together with the BIG-Ten  
28 elected instead, because of their prominence, to negotiate with

1 executives of defendants CAP CITIES/ABC, ABC Sports, ESPN in  
2 order to create their own cartel.

3 41. Plaintiff is informed and believes and thereon  
4 alleges that during 1984-1985, and thereafter, representatives of  
5 the PAC-10, CAP CITIES/ABC, ABC Sports and PTN freely discussed  
6 their mutual intention to restrict the market for televised live  
7 major college football. Defendants CAP CITIES/ABC, ABC Sports,  
8 ESPN, PAC-10 and PTN wanted fewer games to be televised in order  
9 to artificially increase the value of the television package(s).

10 42. The general policy of defendants CAP CITIES/ABC,  
11 ABC Sports and ESPN was to get exclusive rights to cover the  
12 sports events it would show on television. They were concerned  
13 that without the elimination of as much head-to-head competition  
14 as possible, other stations would carry games of local and  
15 regional interest instead of the ABC or ESPN Network National  
16 games. Because games with regional or local interest usually  
17 have higher ratings in the local/regional broadcast areas,  
18 defendants CAP CITIES/ABC, ABC Sports, and ESPN wanted to  
19 eliminate those telecasts in order to preserve and enhance their  
20 advertising revenues from advertisers.

21 43. Plaintiff is further informed and believes and  
22 thereon alleges that by the time of the NCAA decision and  
23 thereafter, defendants CAP CITIES/ABC, ABC Sports and ESPN  
24 decided not to bid individually on games because, according to  
25 ABC Sports executive Charles Lavery, "If we were to buy on an  
26 individual game basis, then there would be no protection, no  
27 exclusivity, with respect to the telecast of that game." The  
28 defendants were firmly committed to purchasing a package of

1 television rights to college football games, rather than to  
2 engage in "cherry-picking" the rights to individual games because  
3 the package approach would minimize any head-to-head competition  
4 and according to Herbert Granath, the president of ESPN's parent  
5 company, a wholly owned subsidiary of CAP CITIES/ABC, exclusivity  
6 has an effect on the price of the package because advertisers are  
7 willing to pay more money for an exclusive package:

8 "[T]he value is computed by virtue of the ratings  
9 which in turn impact the advertising dollars that can  
10 be achieved, [and] rights holders have traditionally  
11 asked for greater rights payments for exclusivity as  
12 opposed to non-exclusivity".

13 44. In or about 1984-1985 the PAC-10 and BIG-Ten,  
14 mindful of not only their importance as premier college football  
15 conferences, but also defendants willingness to pay an  
16 artificially inflated price for a package of games in exchange  
17 for exclusivity during 1984-1985 and, thereafter, demanded an  
18 artificially high price for a package of their football games  
19 which defendants CAP CITIES/ABC, ABC Sports, and ESPN together  
20 with defendant PAC-10 and non-party Big-Ten, conspired and agreed  
21 to pay in exchange for an illegal agreement to restrict the  
22 output and artificially increase the value of live television  
23 broadcasts of these college football games for the benefit of  
24 defendants CAP CITIES/ABC, ABC Sports and ESPN.

25 45. In or about 1988-1989 defendants PTN and CVN  
26 joined the conspiracy by entering into a contract essentially  
27 identical to ESPN's with the PAC-10.

28 46. Plaintiff is informed and believes that there

1 have been discussions between and among defendants CAP  
2 CITIES/ABC, ABC Sports and ESPN on the one hand and defendants  
3 PTN and CVN on the other hand, whereby PTN would become a  
4 subsidiary of, or an affiliate of defendants CAP CITIES/ABC, ABC  
5 Sports and/or ESPN.

6 47. Plaintiff is informed and believes and thereon  
7 alleges that the ultimate objective of this continuing conspiracy  
8 is to "siphon" from free over-the-air broadcasters to cable  
9 television all television sports rights in order to maximize the  
10 number of subscribers, market coverage, revenues and profits by  
11 making televised sports available on a "pay per view" basis only.  
12 Plaintiff is informed and believes that defendants and each of  
13 them have projected that the long-term revenues and profits to be  
14 derived from pay per view will exceed those to be derived from  
15 free over-the-air broadcasting.

16  
17 TELEVISION BROADCASTING AGREEMENT BETWEEN  
18 KMPH AND FSU.

19 48. Subsequent to the NCAA decision in 1984, the  
20 California State University, Fresno Athletic Corporation  
21 ("Corporation"), California Sports Network ("CFSN") and plaintiff  
22 entered into a television broadcasting agreement dated July 1,  
23 1985. In that contract, CFSN and plaintiff are sometimes  
24 referred to collectively as "contractors" and that contract  
25 provides, that contractors have the right of first refusal to  
26 broadcast "FSU sport events". This contract has been extended  
27 through the 1992 season.

28

1991 KMPH/FSU TELEVISION FOOTBALL SCHEDULE

49. Pursuant to and in fulfillment of its contractual obligations with FSU, KMPH was originally scheduled to broadcast, live, the following six (6) home and away games on the following dates: Northern Illinois - September 7, 1991 (home); Washington State - September 14, 1991 (away); Oregon State - September 21, 1991 (away); New Mexico - October 5, 1991 (home); New Mexico State - October 19, 1991 (away); Utah State - November 2, 1991 (away).

50. Pursuant to its contract with KMPH and consistent with the custom and practice of "home rule," FSU sought the permission of WSU to broadcast, live, the football game between FSU and WSU on September 14, 1991. On June 26, 1991, Scott Johnson, FSU's Assistant Athletic Director for Communications, confirmed with the Associate Athletic Director of WSU, Harold Gibeon, that WSU had granted KMPH the right to televise, live, the September 14, 1991 game between FSU and WSU. A true and accurate copy of the letter confirming this agreement is attached hereto as Exhibit "A" and is incorporated herein by reference. The reference to Howard Zuckerman in Exhibit "A" refers to the producer retained by KMPH to produce the broadcast.

51. Pursuant to its contract with KMPH and consistent with the custom and practice of "home rule," FSU sought the permission of OSU to broadcast, live, the football game between FSU and OSU on September 21, 1991. On June 26, 1991, Scott Johnson, FSU's Assistant Athletic Director for Communications, confirmed with the Associate Athletic Director of OSU, Mike Corwin, that OSU had granted KMPH the right to televise, live,

1 the September 21, 1991 game between FSU and OSU. A true and  
2 accurate copy of the letter confirming this agreement is attached  
3 hereto as Exhibit "B" and incorporated herein by reference. The  
4 reference to Howard Zuckerman in Exhibit "B" refers to the



1 exclusive providers of PAC-10 football during the Saturday  
2 afternoon (3:30-6:30 p.m. EST) time period.

3 56. Plaintiff is further informed and believes that  
4 under the terms of the extension with defendant CAP CITIES/ABC  
5 and ABC Sports, the PAC-10 and Big-10 will split approximately  
6 \$108 million over the 1990 through 1996 seasons, representing  
7 more than \$15 million per season.

8 57. Plaintiff is further informed and believes that  
9 defendants CAP CITIES/ABC and ABC Sports have first selection  
10 rights from among the complete Pacific-10 schedule. No  
11 individual university may appear more than three (3) times per  
12 season at home or more than five times in total.

13 58. Plaintiff is informed and believes and alleges  
14 thereon that in or about 1989 defendants PTN, CVN and ESPN  
15 contracted with defendant PAC-10 through the 1994 season. The  
16 contract includes an option which could add the 1995 through 1998  
17 seasons.

18 59. Plaintiff is further informed and believes that  
19 pursuant to this contract defendant PTN will offer ten (10) PAC-  
20 10 telecasts annually over the life of the agreement, with  
21 defendant ESPN currently contracting for two (2) telecasts per  
22 season.

23 60. Plaintiff is further informed and believes that  
24 both defendants PTN and ESPN have offered and will offer  
25 telecasts during the 6:30-10:00 p.m. EST (3:30-7:00 p.m. PST)  
26 window, and have exclusivity except to the extent that both ESPN  
27 and PTN telecast concurrently.

28 61. Plaintiff is further informed and believes that

1 the PAC-10 received \$4.4 million for the 1989 season and if the  
2 option is exercised to extend the contract to 10 years, the total  
3 contract value is \$66 million, or an average of \$6.6 million  
4 annually.

5 62. Plaintiff is further informed and believes that  
6 PTN and ESPN receive second selection priority behind defendant  
7 CAP CITIES/ABC and ABC Sports.

8 63. In the Pacific Time Zone, the exclusivity windows  
9 of defendants CAP CITIES/ABC, ABC Sports, PTN, and ESPN extend  
10 from 12:30-7:00 p.m. As a result, local free-over-the-air  
11 broadcasting opportunities for broadcasters such as plaintiff,  
12 and its viewers, are typically limited to night telecasts. The  
13 effect in the PAC-10 is to limit most over-the-air distribution  
14 to games played at Arizona or Arizona State.

15  
16 **DEFENDANTS PREVENT PLAINTIFF FROM BROADCASTING**

17 **THE FSU GAMES AGAINST WSU AND OSU**

18 64. On August 28, 1991, Scott Johnson, FSU's  
19 Assistant Athletic Director for Communications sent via facsimile  
20 a memorandum to Bon Abercrombie and Lise Markham, employees of  
21 plaintiff KMPH, a document entitled "Client Memorandum." That  
22 document states, in pertinent part:

23 "The Fresno State Athletic Department  
24 recently received word that due to contract  
25 stipulations and complications with the  
26 PAC-10 Conference television contract with  
27 Prime Ticket and ABC-TV, we will not be  
28 able to televise live the Sept. 14 game at

1 Washington State and the Sept. 21 game at  
2 Oregon State. Prime Ticket available  
3 windows do not fit the respective 2:00 p.m.  
4 and 5:00 p.m. kick-off times for those two  
5 games thus not enabling us to do a live  
6 telecast."

7 A true and correct copy of this document is attached hereto as  
8 Exhibit "C" and incorporated herein by reference.

9 65. Plaintiff is informed and believes and thereupon  
10 alleges that pursuant to its contract with defendant PTN,  
11 defendant PAC-10 granted to PTN and pursuant to its contract with  
12 ESPN to defendant ESPN an exclusive time period for the live or  
13 same day delayed presentation of each game or event with respect  
14 to which PTN or ESPN were granted rights under the agreement with  
15 PAC-10. The exclusive cable-casting period was, at all times  
16 herein relevant:

17 "[W]ith respect to football games, such  
18 exclusive time period shall be for a  
19 duration of three (3) hours and thirty (30)  
20 minutes, commencing from the start of the  
21 game cablecast (as differentiated from a  
22 pre-game show). Just as a PTN [or ESPN]  
23 football presentation may overlap an ABC  
24 presentation by not more than forty-five  
25 (45) minutes of that network's scheduled  
26 telecasting period, a telecast or cablecast  
27 by a PAC-10 member in the sport of football  
28 may overlap a PTN [or ESPN] presentation by

1 not more than forty-five (45) minutes of  
2 the exclusive time period." [bracketed  
3 material added]

4 66. Defendant PTN, at all times herein relevant, was  
5 scheduled to broadcast the UCLA versus Tennessee game on  
6 September 14, 1991 commencing at 7:30 p.m. and the Cal versus  
7 Arizona game on September 21, 1991 commencing at 7:00 p.m.

8 67. FSU versus WSU on September 14, 1991, was  
9 scheduled to commence at 2:00 p.m. and would, therefore, have  
10 been telecast during defendant CAP CITIES/ABC, ABC Sports'  
11 exclusivity window. Further, FSU versus OSU on September 21,  
12 1991, which was scheduled to commence at 5:00 p.m., would have  
13 overlapped the Cal versus Arizona game scheduled that day by PTN  
14 by approximately one and one-half (1 1/2) hours. Since the  
15 contract between the PAC-10 and PTN allowed for a 45 minute  
16 overlap, there was a net 45 minute overlap not allowed pursuant  
17 to the PTN/PAC-10 contract. Plaintiff is informed and believes  
18 that these overlaps could have been resolved by starting the FSU  
19 versus OSU game at 4:15 p.m., the Cal versus Arizona game at 7:45  
20 p.m. or by obtaining a waiver from defendants CAP CITIES/ABC, ABC  
21 Sports, PTN and ESPN of these overlaps, which permission  
22 plaintiff is informed and believes could not be unreasonably  
23 withheld.

24 68. On or about September 3, 1991 via facsimile  
25 transmission, Mr. Pappas, on behalf of plaintiff, sent a  
26 memorandum to defendant JOHN SEVERINO, president of defendant  
27 PTN, and transmitted therewith a letter dated August 29, 1991,  
28 mistakenly addressed to Mr. Bob Thompson, an executive of TCI

1     which Mr. Pappas mistakenly believed was the owner of PTN. Via  
2     these communications, Mr. Pappas requested of Mr. Severino a  
3     waiver of any and all exclusivity windows or black-out windows

1 act.

2 71. On or about February 9, 1993 plaintiff was  
3 advised by FSU that plaintiff's continuance of this lawsuit would  
4 likely have negative ramifications for FSU. FSU implied that one  
5 or more of the defendants threatened to sanction FSU by not  
6 scheduling games involving FSU if plaintiff, the broadcaster of  
7 FSU sports events, continued this lawsuit.

8  
9 **FIRST CLAIM FOR RELIEF**

10 (Per Se Violation of Section I of the Sherman Act,

11 15 U.S.C. § 1 Against all Defendants)

12 72. Plaintiff realleges and incorporates herein by  
13 reference each and every allegation contained in paragraphs 1  
14 through 71 of this Complaint.

15 73. By reason of the foregoing, defendants have acted  
16 in concert with the purpose, intent and affect of restraining  
17 trade and commerce in violation of Section One of the Sherman  
18 Act, 15 U.S. C. § 1 and their actions are unlawful per se.  
19 Defendants engaged in a group boycott by refusing to deal with  
20 KMPH; by boycotting KMPH; by restraining PAC-10 member  
21 institutions, specifically WSU and OSU, from appearing in cross-  
22 over games to be televised solely by KMPH; notwithstanding the  
23 fact that the defendants did not intend to provide these games to  
24 the local television market. the ADT of KMPH. regionally. or

1 OSU, respectively, and by threatening FSU with sanctions.

2 74. Defendants are also engaged in a horizontal  
3 cartel, by which they have agreed to reduce the output of college  
4 football games, in order to increase, artificially, the price and  
5 the value of the PAC-10/ PTN/ESPN cable carriage package and the

1 (Rule of Reason violation of Section I of the Sherman Act,  
2 15 U.S.C. § 1 Against All Defendants)

3 77. Plaintiff realleges and incorporates by this  
4 reference each and every allegation of paragraphs 1 through 76 of  
5 this Complaint.

6 78. Defendants agreements have not only reduced  
7 output and artificially increased the price of the subject  
8 television/cable carriage packages, but also subverted viewer  
9 choice and eliminated head-to-head competition between themselves  
10 and broadcasters such as plaintiff herein, all without any  
11 countervailing, procompetitive justification. Defendants'  
12 agreements restrain trade unreasonably in violation of Section  
13 One of the Sherman Act, § 15 USC § 1.

14  
15 THIRD CLAIM FOR RELIEF

16 (Attempt to Monopolize Against All Defendants)

17 79. Plaintiff realleges and incorporates by this  
18 reference each and every allegation of paragraphs 1 through 78 of  
19 this Complaint.

20 80. Defendants have engaged in the conduct alleged  
21 herein with the specific intent to monopolize the market for live  
22 television broadcasts of college football games including inter



1 The goal of defendants PTN, CVN, ESPN, CAP CITIES/ABC and ABC  
2 Sports is to monopolize the presentation of live college football  
3 and ultimately increase their revenues and profits by restricting  
4 the presentation of live college football games to pay per view  
5 only. The goal of defendant PAC-10 is to be the exclusive  
6 representative of all of the members of defendant, PAC-10,  
7 including OSU and WSU, negotiating television rights for college  
8 football games involving members of the PAC-10 so output will be  
9 restricted and the price of each individual contest and the  
10 package(s) as a whole will be artificially increased and to  
11 participate in the attempt to make such events pay per view only.

12 82. Defendants PTN, CVN, CAP CITIES/ABC, ABC SPORTS,  
13 ESPN and PAC-10 have sought and continue to seek a monopoly of  
14 the live college football television market including, inter  
15 alia, games between members of the PAC-10 and non-members of the  
16 PAC-10 and defendants seek to form a cartel as the dominant  
17 market power to gain monopoly control over the provision of such  
18 broadcasts by excluding local television broadcasters such as  
19 KMPH from the relevant markets.

20 83. There is a dangerous probability that defendants  
21 will succeed in monopolizing the market for live television  
22 broadcasts of college football games as alleged herein. If  
23 defendants succeed in monopolizing the market by continuing to  
24 implement the exclusivity provisions of their contracts and  
25 agreements then competition will be impaired in that this unique  
26 product, live television broadcasts of college football games,  
27 for which there is no substitute, will be restricted to  
28 defendants and unavailable to broadcasters such as plaintiff